

JOSEPHINE M. BUCHEN

IBLA 79-345

Decided March 31, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 0219 and OR MC 0220.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The owner of an unpatented mining claim located before Oct. 21, 1976, has until Oct. 22, 1979, in which to record her notice of location with BLM. However, if she elects to record in 1977, she must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: John L. Jacobson, Esq., of Baker, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated March 23, 1979, of the Oregon State Office, Bureau of Land Management (BLM), holding mining claims OR MC 0219 and 0220 void for failure to file assessment statements or notices to hold the claims as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), hereinafter "FLPMA."

The claims involved in this appeal were located prior to October 21, 1976. The record shows that these claims were recorded

with BLM in 1977 and that appellant had timely filed affidavits of assessment work performed in 1977. The decision appealed from states that no assessment statement (proof of labor) or notice of intention to hold the claims was received by BLM prior to December 31, 1978, as required by FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellant submits with her appeal a photocopy of "Proof of Labor" for these placer claims, indicating that such notice was filed with the clerk of the county of Baker, Oregon, in August of 1978.

Appellant states that a copy of said "Proof of Labor" was sent to BLM no later than the first week of December 1978. There is no proof in the record that this statement was transmitted. BLM indicates that generally, proof of filings are acknowledged by BLM form 3830-1 within 3 days after receipt. Appellant did not mention receiving an acknowledgement and did not provide a copy of the assessment proof of labor until filing her appeal with this Board. The record shows that proof of labor was not filed until April 19, 1979, for the claims.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), establishes mandatory procedures for the recordation of information concerning mining claims located on the Federal lands.

The pertinent regulation, 43 CFR 3833.1-2(a) provides in relevant part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, * * * shall file (file shall mean being received and dated stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

Once the claim is recorded with BLM, 43 CFR 3833.2-1(a)(1) is applicable, which provides as follows:

The owner of an unpatented mining claim located on Federal land * * * on or before October 21, 1976, shall file * * * prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart [*i.e.*, pursuant to 3833.1-2] evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis supplied.]

In the event a mining claimant fails to comply with the recordation requirements, the regulations further provide:

Section 3833.4 Failure to file

(a) The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site or tunnel site and it shall be void. [Emphasis supplied.]

These claims were located prior to October 21, 1976, but were recorded with BLM in 1977. Thus, one or the other of the documents had to be filed prior to December 31, 1978, the year following the calendar year in which the claims were recorded with BLM. A document is not "filed" with BLM unless or until it is actually received and stamped in the proper office. C. F. Linn, 45 IBLA 156, 157 (1980).

When appellant failed to file either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims to have been abandoned and declared them void. Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Carruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

